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6   UNITED STATES DISTRICT COURT
                          WESTERN DISTRICT OF WASHINGTON
7   AT SEATTLE

8   KIRK L. WILLIAMS,
                                                     NO. C18-1012RSL
9   Petitioner,

10   v.   ORDER DENYING MOTION TO
                                                     ALTER OR AMEND JUDGMENT
11   JAMES KEY,

12   Respondent.

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15   This matter comes before the Court on petitioner's motion for reconsideration or to alter

16   or amend the judgment in the above-captioned matter. Dkt. # 44. On August 22, 2019, the Court

17   adopted the Report and Recommendation of the Honorable Michelle L. Peterson, dismissing the

18   habeas petition as untimely. Petitioner seeks reconsideration arguing that (a) there was cause for

19   the procedural default such that the delay in filing should be excused and (b) a claim of actual

20   innocence can overcome the Antiterrorism and Effective Death Penalty Act's one-year statute of

21   limitations. The Magistrate Judge found, and the undersigned agreed, that petitioner had not

22   demonstrated that he was entitled to equitable tolling of the limitations period. With regards to

23   the claim of actual innocence, petitioner correctly states the law, but fails to support the claim.

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25   The miscarriage of justice exception to the limitations period applies only when the petitioner

26   makes a convincing showing of actual innocence. See McQuiggin v. Perkins, 569 U.S. 383, 392

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     ORDER DENYING MOTION TO
28   ALTER OR AMEND JUDGMENT - 1

1   (2013). The exception "applies to a severely confined category" of cases, namely those in which

2   the petitioner "persuades the district court that, in light of the new evidence, no juror, acting

3   reasonably, would have voted to find him guilty beyond a reasonable doubt." <u>Id.</u> at 386, 395

4   (quoting <u>Schlup v. Delo</u>, 513 U.S. 298, 329 (1995)). Petitioner has not raised a tenable actual

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6   innocence claim that could overcome the applicable one-year statute of limitations.

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8   For all of the foregoing reasons, petitioner's motion for reconsideration and/or the alter or

9   amend the judgment is DENIED.

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11   Dated this 26th day of September, 2019.

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13   Robert S. Lasnik
                               United States District Judge

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28   ORDER DENYING MOTION TO
  ALTER OR AMEND JUDGMENT - 2